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VOC FOR IOP/FN
BACKGROUNDER 1-0918
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FOREIGN GOVERNMENTS WIN NEW RIGHT TO SUE IN U.S.

ANNCR:

A RULING BY AN AMERICAN FEDERAL APPEALS COURT HAS SIGNIFICANTLY EXPANDED THE RIGHT OF FOREIGN GOVERNMENTS TO COLLECT MONEY DAMAGES IN ANTI-MONOPOLY CASES. CHRIS KERN HAS A BACKGROUND REPORT.

VOICE:

A U.S. COURT OF APPEALS RULING HAS GREATLY INCREASED THE CHANCES THAT AMERICAN BUSINESSMEN WILL BE SUED FOR MONOPOLISTIC PRACTICES BY THE GOVERNMENTS OF OTHER COUNTRIES.

THE DECISION CAME IN A LONGSTANDING ANTI-MONOPOLY CASE AGAINST SIX AMERICAN MANUFACTURERS OF ANTIBIOTIC DRUGS. THE COMPANIES WERE ACCUSED OF OVERCHARGING CUSTOMERS WHO BOUGHT TETRACYCLINE AND OTHER WIDELY-USED ANTIBIOTICS. THE LAWSUIT WAS BROUGHT BY SEVERAL AMERICAN HEALTH INSURANCE COMPANIES WHO PAID FOR THE DRUGS ON BEHALF OF THE INDIVIDUALS THEY INSURE.

UNDER AMERICAN ANTI-MONOPOLY LAWS, THE COMPANIES WERE PERMITTED TO SUE FOR THREE TIMES THE AMOUNT OF THE OVERCHARGES. THIS SO-CALLED "TREBLE DAMAGE" PROVISION IS DESIGNED TO ENCOURAGE ENFORCEMENT OF THE LAWS, WHICH RESTRICT SUCH ACTIVITIES AS CONSPIRING TO KEEP PRICES ARTIFICIALLY HIGH. AWARDING A SUCCESSFUL PLAINTIFF THREE TIMES THE ECONOMIC INJURY HE HAS SUFFERED AS A RESULT OF THE MONOPOLISTIC PRACTICE PROVIDES AN INCENTIVE FOR INVESTING THE TIME AND MONEY THAT'S NEEDED TO PREPARE THESE OFTEN-COMPLICATED LAWSUITS.

THE U.S. GOVERNMENT CAN ALSO SUE UNDER THE ANTI-MONOPOLY LAWS TO COLLECT DAMAGES ON BEHALF OF CONSUMERS. BUT WHEN THE

GOVERNMENT WINS A SUIT, IT ONLY COLLECTS THE AMOUNT OF DAMAGES ACTUALLY CAUSED BY THE MONOPOLISTIC PRACTICE -- NOT THREE TIMES AS MUCH. THE THEORY BEHIND LIMITING THE AMOUNT THE GOVERNMENT CAN COLLECT IS THAT THE GOVERNMENT DOESN'T NEED AN ECONOMIC INCENTIVE TO ENFORCE THE LAWS.

UNTIL NOW, THE RULES THAT APPLY TO THE U.S. GOVERNMENT WERE ALSO CONSIDERED TO APPLY TO OTHER GOVERNMENTS AS WELL. BUT WHEN THE GOVERNMENTS OF INDIA, IRAN, THE PHILLIPINES AND THE FORMER REPUBLIC OF VIETNAM ENTERED THE LAWSUIT AGAINST THE DRUG FIRMS ON BEHALF OF THEIR NATIONALS WHO HAD PURCHASED AMERICAN ANTIBIOTICS, THEY ARGUED THAT THEY SHOULD BE TREATED THE SAME AS PRIVATE PLAINTIFFS. AND IN THE FIRST MAJOR DECISION ON THE ISSUE, ONE OF THE ELEVEN U.S. COURTS OF APPEALS HAS AGREED. THE COURT RULED THAT THE LAWS WERE INTENDED TO DISTINGUISH BETWEEN THE AMERICAN GOVERNMENT AND THOSE OF OTHER COUNTRIES.

SO FAR THE DECISION IS THE LAW ONLY IN THAT ONE JUDICIAL DISTRICT, BUT AS THE FIRST APPEALS COURT RULING ON THIS QUESTION, IT IS SURE TO INFLUENCE FUTURE CASES IN OTHER DISTRICTS. THE SUPREME COURT OR CONGRESS COULD OVERRULE IT, BUT THE SUPREME COURT REFUSED TO RULE ON THE CASE IN AN EARLIER STAGE OF THE LITIGATION AND NO BILL HAS BEEN INTRODUCED IN CONGRESS TO CHANGE THE LAW. FOR THE TIME BEING, AT LEAST, THE RULING HAS ESTABLISHED A RIGHT OF FOREIGN GOVERNMENTS TO USE THIS COUNTRY'S COURTS NOT JUST TO VINDICATE THE RIGHTS OF THEIR OWN CITIZENS, BUT TO HELP ENFORCE THE ANTI-MONOPOLY POLICIES OF THE GOVERNMENT OF THE UNITED STATES.

GH/CAK